June 2010

TANE L. CLINE Insurance Commissioner

WEST VIRGINIA INFORMATIONAL LETTER

NO. 174

TO: All Insurance Companies Doing Business in the State of West Virginia, Insurance Trade Associations, Insurance Media Publications and Other Interested Persons

RE: **Summary of 2010 Legislation**

This Informational Letter summarizes significant insurance legislation enacted during the 2010 Regular Session of the West Virginia Legislature. It does not necessarily include all legislation that may affect the insurance industry or insurance consumers and is only intended to highlight the major points in the more important bills. The explanations contained herein should in no way be construed as being indicative of the Insurance Commissioner's views on or interpretation of the legislation.

The bills are available on the Legislature's website at www.legis.state.wv.us. The rules can be found on the Insurance Commissioner's website at www.wvinsurance.gov or the Secretary of State's website at www.wvsos.com.

BILLS

Senate Bill 394 - Authorizing DMV use certain program to identify uninsured vehicles (effective June 11, 2010)

The focus of this bill is to authorize the DMV Commissioner to develop and implement an electronic verification system that will enhance the ability of DMV, law enforcement and others to identify uninsured noncommercial motor vehicles. The bill also amends the insurance code to require insurance companies to participate in any such verification program and authorizes the Insurance Commissioner to propose rules to permit her to sanction companies that do not comply with the DMV program's requirements.

Senate Bill 483 - Authorizing HMOs to offer point of service option (effective June 18, 2010)

This bill authorizes HMOs to directly offer a point-of-service option that would give enrollees the choice of receiving care outside an HMO's panel of health care providers. Prior to this change, HMOs could only provide such an option by contracting with an indemnity insurer to offer the coverage under a separate policy.



Senate Bill 665 - Transferring certain Health Care Authority's duties to Insurance Commissioner (effective June 9,2010)

In 2000, the Health Care Authority was given the task of working with an advisory group to develop standard and uniform forms and procedures for use in health insurance claims. The bill simply transfers the task to OIC.

House Bill 4038 - Imposing a statutory lien on fire insurance proceeds in the event of a total loss to real property (Governor's bill) (effective June 9,2010)

This bill makes homeowner's insurance proceeds available for the cleanup of destroyed properties, regardless of whether the policy includes debris removal coverage, by creating a statutory lien on the proceeds in favor of the local government. The initial lien -- the larger of \$5,000 or 10% of the policy's face amount -- comes into existence upon the declaration of a total loss, at which point the company has to notify the city or county where the destroyed property is located. The city or county then has 30 days to keep the lien alive by filing a notice of lien in the county clerk's office; this filed lien must be in the amount of the estimated cost of clean-up but may not be larger than the initial lien. Thereafter, the lien can only be released if the city or county issues a certification that the property has been cleaned up, that arrangements satisfactory to the city or county have been made to do so, or that the company has paid the full amount to the city or county. The Commissioner may withdraw the eligibility of any noncompliant surplus lines carrier.

House Bill 4128 - Relating to Insurance Companies Being in Hazardous Condition (OIC agency bill) (effective June 1,2010)

The National Association of Insurance Commissioners (NAIC) has in place an accreditation program that is designed to assure that each accredited state has sufficient authority and resources to regulate the solvency of its domestic industry, thereby permitting other states to rely on the domiciliary state's examinations. This bill, which is based on a model regulation, provides additional standards for determining whether the continued operation of any insurer might be deemed to be hazardous to its policyholders, creditors or the general public, gives the Insurance Commissioner additional authority to issue an order requiring companies deemed to be in hazardous financial condition to take corrective action, and adds protections against disclosure of documents related to supervisory actions.

House Bill 4176 - Relating to credentialing of heath care practitioners (effective June 9,2010)

Credentialing of health care providers is required by hospitals, insurers and other health care entities to assure that their providers are proficient. An integral part of the credentialing process is primary source verification of a provider's training, licensure, work history, etc. The verification can be done by the credentialing entity itself or contracted out to another entity known as a "credentialing verification organization" or CVO. This bill, which grew out of the efforts of a statutorily-created advisory group, requires DHHR and OIC to propose rules by June 1, 2011 that would lead to the establishment of a single CVO for the entire state by 2015. The bill also requires that the rules address the issue of a common re-credentialing date for all providers.

House Bill 4260 - Relating to insurance adjusters (OIC agency bill) (effective June 11, 2010)

The federal Risk Management Agency (RMA) operates the national crop insurance program under which RMA bears the risk with respect to policies written by participating insurance carriers. RMA is now requiring that crop adjusters be tested for proficiency in crop insurance matters. Although West Virginia tests applicants for an adjuster's license, it is a general test that is not geared to crop insurance issues. In order to avoid possible federal preemption of its adjuster licensing laws, this bill creates a new crop adjuster license (in addition to "public" and "company" licenses). The bill also provides that the Insurance Commissioner must test applicants for such a license but that she can designate an RMA-approved vendor that is able to certify proficiency.

The bill also brings several aspects of the general adjuster licensing laws into conformity with those governing producer licensing: (1) It permits a non-resident licensee whose state of residence or business does not license adjusters to designate as his or her "home state" any state in which he or she has a license; (2) it authorizes the Commissioner to adjust renewal dates and to waive renewal requirements for good cause, e.g. military service; and (3) it permits renewal without retesting within a year of a lapse by payment of twice the usual fee. The bill also requires adjusters to report adverse actions taken against them in other jurisdictions (e.g. criminal prosecutions), authorizes the Commissioner to examine the business of applicants and licensees, and permits an applicant to demand a hearing if his application is denied.

House Bill 4273 - Relating to Professional Employer Organizations (PEOs) (OIC agency bill) (effective June 11, 2010)

Under current law, a PEO *licensee* is subject to all of the administrative penalties in W. Va. Code §33-46A-8 – license revocation/suspension or a penalty up to \$10,000 – but a person performing PEO activities without a license is arguably only subject to an injunction in circuit court pursuant to an OIC rule. *See* 114 WV CSR 85-12.2 (May 14, 2009). This bill clarifies that the OIC has authority to take action against *unlicensed* PEOs by providing that they are subject to the same enforcement actions – injunctive, administrative, civil and criminal – that are available against unauthorized insurers pursuant to W. Va. Code §§33-44-6 to -9.

House Bill 4459 - WC - Increasing time in which dependent may apply for Workers' Compensation death benefits where occupational pneumoconiosis is determined to be a cause of death $({\it effective June}~8,2010\,)$

This bill requires OIC to create a form notice that an entity paying workers' compensation OP death benefits must send to the recipient to advise that the benefits will stop on a date certain and that the dependent may be eligible under W. Va. Code §23-4-15 for additional benefits if it can be proven that the worker's OP contributed to his or her death. It also increases -- from 1 year to 2 years from the date of a worker's death -- the time period in which a dependent must make application for such additional benefits.

House Bill 4615 - Authorizing political subdivisions to establish risk pools to insure their workers' compensation risks (effective March 12, 2010)

Counties and other political subdivisions are required to purchase mandatory workers' compensation coverage from BrickStreet through June 30, 2010; after that date, these entities may make other arrangements to meet their statutory obligations and, beginning July 1, 2011, BrickStreet may refuse to cover these entities. See W.Va. Code §23-2C-15(b). For the last few years, political subdivisions have been able to create risk pools to insure certain casualty risks except workers' compensation. This bill expands the current statute to permit risk pools to cover workers' compensation risks as well but prohibits such coverage until rules proposed by the Insurance Commissioner have been made effective.

LEGISLATIVE RULES

Senate Bill 407 - Authorizing the Insurance Commissioner (Series 114) and the Director of the West Virginia Health Insurance Plan [AccessWV, the State's high risk plan] (Series 113) to promulgate legislative rules.

113 CSR 1 - Premium Subsidy (new rule, effective April 14, 2010)

In 2009, the AccessWV statute was amended to permit the use of any surplus in the Plan's account to subsidize premiums of "certain low income enrollees whose eligibility shall be established by legislative rule." This rule implements the statute by creating eligibility standards based on income and household size; eligibility is limited to persons with an annual household income at or below 200% of the federal poverty level.

113 CSR 2 - Pre-Existing Conditions Exclusions (new rule, effective April 14, 2010)

With two exceptions, persons enrolling in AccessWV are ineligible for coverage of the treatment of pre-existing conditions for the first six months of enrollment. See W.Va. Code §33-48-8(d)(1). In 2009, the Legislature gave the AccessWV Board of Directors the authority to propose a rule to add new classes of persons who would also be able to escape the six-month waiting period for pre-existing conditions. This rule exempts, in whole or in part, persons who are coming into AccessWV from: (1) a public program, e.g. Medicaid; (2) another state's high-risk plan; or (3) a private plan with premiums in excess of a similar AccessWV plan. In either of the latter two instances where the person had not yet met the prior plan's pre-existing condition waiting period, credit against the AccessWV plan's 6-month waiting period would be given for any time credited against the prior plan's waiting period.

114 CSR 11D - Variable Life Insurance (new rule effective July 16, 2010)

A "variable life policy" provides life insurance for which the amount or duration varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to that policy. This new rule, which is based on an NAIC model that

sets forth a comprehensive regulatory scheme, covers qualifications of companies and producers, contents of policies, reserve requirements, requirements for the maintenance of separate accounts and information that must be furnished to applicants for such policies. It also requires the insurer to annually disclose to the policyholder certain information pertaining to the policy, such as the cash surrender value.

114 CSR 11E - Annuity Disclosure (new rule, effective July 16,2010)

This new rule, which provides standards for disclosure of information in transactions involving annuity contracts, works hand in hand with 114 CSR 11B, "Suitability in Annuity Transactions," and is similar to 114 CSR 11A, which performs the same function with regard to life insurance. The rule specifies the minimum information that must be disclosed to a prospective buyer and the method for disclosing it; it also requires that applicants be provided a "Buyer's Guide" and a standard disclosure document, each of which is set forth in the appendix to the rule. The standard disclosure document must include a detailed description of the contract and its benefits, an explanation of how rates may change, how the values of the annuity can be assessed and the tax implications of the contract. Annual reports to the contract holders are required in specified circumstances. Violations of the rule are subject to the penalty provisions of the unfair trade practices act, W. Va. Code §33-11-1 et seq.

114 CSR 24 - Medicare Supplement Insurance (amended rule, effective April 14, 2010)

Congress recently enacted two laws -- the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) and the Genetic Information Nondiscrimination Act of 2008 (GINA) -- that require the NAIC to revise its Medicare Supplement Insurance Regulation (Model 651) and the states to adopt such changes; the amendments to this rule adopt these NAIC revisions. These amendments provide for a new 2010 Standardized Medicare Supplement (or "Medigap") policy to replace the current 1990 Standardized Medigap policy. It further provides that such a policy cannot be effective until June 1, 2010, after which no 1990 Standardized Medigap policy can be made effective, and that existing policyholders may keep their old policies. Among other changes in the rule are the elimination of four plans and the creation of two new ones; the elimination of certain benefits ("at-home recovery" and "preventive care"), and the creation of a new hospice benefit.

Changes mandated by GINA include a prohibition of discrimination in the pricing of a Medicare supplement policy or denial of such a policy on the basis of genetic information; a limit in the ability of Medigap issuers from requesting or requiring genetic testing; and a prohibition in the collection of genetic information for underwriting or other purposes prior to enrollment.

114 CSR 28 - Coordination of Health Benefits (amended rule, effective April 14, 2010)

The amendments to this rule, which are based on an NAIC model, provide the process by which benefits are coordinated between and among various health insurance carriers when an insured is covered by more than one plan. The amendments take into account recent innovations such as health savings accounts and high deductible plans. A primary aim of the rule is to permit secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed

an insured's total allowable expenses. The amendments also provide for coordination of benefits with respect to individual health plans; the current rule only applies to group plans. The new rules apply to all health insurance policies issued on or after January 21, 2011.

114 CSR 36 - West Virginia Life and Health Guaranty Association Act Notice Requirements (amended rule, effective April 14,2010)

The amendments to this rule update the appendix to reflect extensive amendments in 2009 to the West Virginia Life and Health Insurance Guaranty Association Act, W. Va. Code §33-26A-1 et seq. The appendix being replaced was an OIC-approved template for the summary document mandated to be provided to policy/contract holders. See W. Va. Code §33-26A-19(b)-(c). The changes reflect the increased coverage limits contained in the bill and the addition of the types of policies/contracts to which the statute applies. An additional appendix sets forth the separate document required by W. Va. Code §33-26A-19(d) that is required if the policy/contract being delivered will not be covered by the Guaranty Association.

114 CSR 64 - Mental Health Parity (amended rule, effective April 14, 2010)

Federal legislation requires that large group health plans — more than fifty enrollees—that offer mental health benefits must provide "parity" between such benefits and medical/surgical benefits with respect to treatment limits (same limits on number of inpatient and outpatient visits) and financial limitations (same deductibles, copays and other cost sharing). In response to the federal law, the state parity statute, W. Va. Code §33-16-3a, was amended in 2009 in several respects, e.g. West Virginia's method of measuring the overall cost of parity used "anticipated costs" rather than the new federally-prescribed use of "actual costs" as the basis of assessing parity. The amendments to this rule reflect the recent federally prescribed changes to the state parity statute.

114 CSR 80 - Viatical Settlements (amended rule, effective April 14, 2010)

This rule amendment reflects the 2009 amendment of the broker licensing provisions in W. Va. Code §33-13C-3 to permit, as an alternative to a \$250,000 bond, evidence of an errors and omissions policy in the amount of \$100,000 per occurrence and a \$300,000 annual limit.

114 CSR 87 - Preventative Care Pilot Program (new rule, effective April 14, 2009)

In 2006, the Legislature created the preventive care pilot program under which health providers (usually clinics) could be licensed to sell prepaid memberships that entitled subscribers (individuals or families) to use the clinics' primary and preventive health services; however, memberships could not be sold to persons who had health insurance coverage within the prior year. In 2009, the statute was amended to permit the sale to an employer or individual who had had a high-deductible policy within the last year if the clinic could demonstrate that the prepaid plan would not "negatively impact" the prospective member's current coverage. See W. Va. Code §16-2J-7(3). This new rule defines the circumstances under which individuals who have or employers who provide high deductible plans may also participate in the pilot program. The rule also requires a participating provider to give notice to the individual or employer that the

payment for the clinic membership may or may not, depending on the policy, count towards the health insurance deductible.

114 CSR 89 - Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (new rule, effective July 1,2010)

This new rule makes it a specific violation of the insurance laws for an insurance producer (agent) who is attempting to sell life insurance or an annuity to claim that he or she has a professional certification that would indicate that he or she has special expertise in advising seniors. The rule also provides guidelines for determining when the use of a certification is not prohibited; for example, there is a rebuttable presumption that a certification from American National Standards Institute is valid.

Please e-mail any questions concerning this Informational Letter to Informational.Letters@wvinsurance.gov or call (304) 558-0401.

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